

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

June 12, 2001

GSBCA 15480-RELO

In the Matter of PAUL HENDERSON

Paul Henderson, Grand Island, NY, Claimant.

B. Kastle Brill, Office of Counsel, Buffalo District, Corps of Engineers, Buffalo, NY,
appearing for Department of the Army.

BORWICK, Board Judge.

Claimant, Paul Henderson, an employee of the United States Army Corps of Engineers (agency), seeks permanent change of station (PCS) reimbursement for his family's move from Laurium, Michigan to Buffalo, New York. The agency, through its Finance Office, denied reimbursement. The agency determined that its District Office had issued an invalid travel authorization granting claimant PCS entitlements. The agency concluded that when claimant's family moved, Laurium, Michigan was not claimant's duty station since claimant had been working as a temporary employee in the Buffalo, New York area for two years. This determination was sustained by the Defense Finance and Accounting Service (DFAS). The agency's District Office supports claimant.

We sustain the decision of the agency. The agency's determination that claimant is not entitled to PCS reimbursement is in accordance with statute, the implementing Federal Travel Regulation (FTR), and the Joint Travel Regulations (JTR) which supplement the FTR.

The facts as shown by the record are as follows. Effective April 1, 1997, the agency appointed claimant to a temporary position as a deckhand on the Tugboat Chetek (later renamed the Koziol.) The agency's appointment document, the Standard Form 50-B, stated that claimant's work was full time. Claimant's official duty station was designated as Buffalo, New York. Effective April 1, 1998, the agency extended claimant's temporary appointment and designated the work as full time seasonal. The Standard Form 50-B stated that temporary employees served under appointments limited to one year or less and were subject to termination at any time without use of adverse action or reduction in force (RIF) procedures. Effective March 28, 1999, the agency changed claimant's position from a deckhand to a maintenance worker at the Black Rock Lock at Buffalo, New York. The work was stated to be full time and the agency stated on the claimant's Standard Form 50-B that

temporary employees served under appointments limited to one year or less and were subject to termination at any time without use of adverse action or RIF procedures.

Effective April 25, 1999, the agency changed the status of claimant's employment from temporary to career conditional and changed his "organization" (as stated on the Standard Form 50-B) from the Black Rock Lock, Buffalo, New York to the Tug Chetek, Buffalo, New York.

The agency's District Office says that claimant's permanent and legal residence was in Michigan and that claimant's wife and children resided in Michigan. According to the agency's District Office, when claimant stayed in Buffalo, he stayed with his parents, who owned property near there. When claimant was not in Buffalo, he stayed in commercial lodgings in the same manner as other employees. The agency does not state whether it considered claimant or the other employees on travel status when they were not in Buffalo.

The agency's District Office did not offer claimant PCS expenses in April 1999, when claimant converted from temporary to permanent employment. About one year after claimant's conversion of employment status, the agency's District Office of Personnel asked an employee of Human Resources, Headquarters United States Army Chief of Engineers (HQUSACE/HR) whether PCS payments would be appropriate. The Human Resources employee said yes.

The agency's District Office concluded that claimant was entitled to PCS expenses and explained its reasoning in a memorandum of May 8, 2000. The agency's District Personnel Officer believed that in April 1999, when claimant converted from a temporary position to a permanent position, he would have been deemed a new hire and eligible for PCS expenses. The agency's District Office reasoned that since the agency failed to extend PCS expenses to claimant in April 1999, he was entitled to reimbursement of those expenses one year later.

Claimant sold his house in Michigan, with the settlement occurring on June 27, 2000. According to the settlement sheet, claimant incurred \$4085.73 of real estate transaction expenses. The record is not clear as to whether by this time the agency had orally assured claimant that he would receive PCS entitlements.

The agency's District Office issued a travel authorization, dated July 5, 2000, for claimant's PCS (including mileage for driving his privately-owned conveyance, miscellaneous expenses, real estate expenses, temporary storage of household goods (HHG) and shipment of HHG from Michigan to Buffalo, temporary quarters subsistence expenses, and per diem for the employee.) The travel authorization stated in block seven that claimant's releasing official station or actual residence was Laurium, Michigan, in block eight that claimant's new official station or actual residence was the United States Army Engineering District, Buffalo, New York, and in block ten that the purpose was to travel between official stations.¹

¹ Claimant states that he received "orders for PCS" on May 15 signed by Major Eastman; our copy of the travel authorization granting PCS entitlements is dated July 5.

Claimant requested a travel advance, and on July 11, the request was discussed between the agency's District Office and the agency's Finance Center, which questioned claimant's entitlement to PCS expenses. The Finance Center referred the matter to DFAS. Meanwhile, between July 11 and July 14, claimant moved his family from Michigan to Buffalo.

On July 27, DFAS concluded that the agency's District Office had issued an invalid travel authorization to claimant because the authorization was "attempting to pay for entitlements to which [claimant] was not authorized." DFAS concluded that when claimant was "first hired by the Buffalo District in January" [it may have meant April 25, 1999, when claimant's status changed from temporary to career conditional employee] claimant would have been entitled only to the limited benefits of a new appointee. Thus DFAS said that the agency's District Office erroneously determined that claimant would be entitled to privately-owned conveyance (POC) mileage, per diem for dependents, TQSE, miscellaneous expenses and real estate expenses. Claimant filed a claim at this Board contesting that determination.

Despite DFAS's contrary determination, the agency District Office supports the claim, arguing that the Government is estopped from denying claimant PCS expense reimbursement since it authorized reimbursement and claimant relied on the Government's authorization.

Our analysis of claimant's entitlement to relocation expenses begins with the relevant statutory provisions. Statute provides that pursuant to regulation and upon approval of the agency head or his or her designee, when an employee "is transferred in the interest of the Government" an agency may pay an employee's travel and transportation expenses including the expenses of storage and transportation of household goods. 5 U.S.C. § 5724(a) (1994 § Supp. V 1999). Statute provides that an agency may pay to an employee who "transfers in the interest of the Government" per diem expenses or actual subsistence expenses or a combination of both for en-route travel for the employee and the employee's family, 5 U.S.C. § 5724a, expenses to seek permanent residence quarters, 5 U.S.C. § 5724a(b)(1)(A), and per diem allowance or actual subsistence expenses, 5 U.S.C. § 5724a(b)(1)(B). Statute provides that agencies may pay to or on behalf of an employee who transfers in the interest of the Government actual subsistence expenses of the employee and the employee's immediate family for stated time periods. 5 U.S.C. § 5724a (c)(1)-(c)(2). Finally, statute provides that an agency shall pay to an employee who transfers in the interest of the Government, expenses of the sale of a residence at the old official station and purchase of a residence at the new official station. 5 U.S.C. § 5724a(d)(1).

For new appointees, statute provides that an agency may pay the travel expenses of a new appointee and the transportation expenses of his or her immediate family and the cost of moving the appointee's household goods from the appointee's place of residence at the time of selection or assignment to the appointee's duty station, provided the employee agrees to remain in Government service for twelve months. 5 U.S.C. § 5723(a), (b).

The FTR implements the statutory scheme and the JTR supplements the FTR. Since claimant is an employee of the Corps of Engineers, we focus primarily on the JTR.

The JTR defines permanent duty station or official station as the location of the employee's permanent work assignment. For the purpose of determining PCS travel

allowances, the permanent duty or official station is "the building or other place (base, post or activity) where an employee regularly reports for duty." With respect to entitlement under the regulations relating to residence and the household goods and personal effects of an employee, permanent duty station or official station "means the residence or other quarters from which the employee regularly commutes to and from work," except where the station is in a remote area where adequate family housing is not available within reasonable daily commuting distance. In that situation, the residence includes the dwelling where the dependents of the family reside or will reside, but only if such residence "reasonably relates" to the permanent or official station as determined by the appropriate travel approving official. JTR Appendix A. The JTR define a permanent change of station as an assignment, detail or transfer of an employee to a "different [permanent duty station] under competent orders that do not specify the duty as temporary." Id.

Permanent station travel is either new appointee travel from the actual residence to the first permanent duty station to begin work, or permanent change of station travel "upon transfer in the Government's interest from one [permanent duty station] to another without a break in employment continuity with departments and agencies of the Federal Government." JTR C4000-A.1, A.2. The JTR provide that PCS allowances shall be paid "to employees transferred from one official station to another for permanent duty," provided that a determination is made that the transfer is in the interest of the Government. JTR C4100-B. Dependent travel and transportation may be authorized in connection with a permanent change of station, but are based on the employee's entitlement. JTR C7000-A. The JTR provides for sale of a residence at the old permanent duty station by an eligible employee. JTR C14000-A.1.

In this case the agency District Office erroneously deemed claimant entitled to reimbursement of full permanent change of station expenses upon his conversion to career conditional on April 25, 1999. As seen above, the statute requires that an employee transfer in the interest of the Government for the employee to be entitled to travel and transportation expenses. As implemented by the JTR, the transfer must be from one duty station to another. In this regard, the agency's listing of Laurium, Michigan as a permanent duty station was erroneous. Claimant never worked for the agency in Michigan; he started employment in the Buffalo, New York area.

What of claimant's entitlement to reimbursement for the expenses of sale of his house in Michigan? Under the FTR, an employee is entitled to reimbursement of allowable expenses for the sale of one residence at the employee's old duty station. 41 CFR 302-6.1 (1999). Residence means the "residence or other quarters from which the employee regularly commutes from work." 41CFR 302-1.4(k), incorporated by 41 CFR 302-6.1(b). The JTR is substantively the same. C14000-A. A commute is regular when it is daily. David Morell, GSBCA 15229-RELO, 00-1 BCA ¶ 30,899. Claimant and the agency's District Office argue that the Michigan house was actually his residence since claimant's family was in Michigan, his permanent and legal residence was in Michigan, he voted in Michigan, and he paid Michigan taxes. Those facts, if true, do not establish the house as a "residence" for reimbursement purposes under the FTR or JTR. Rather, the abode must be the one from which the employee regularly commuted to and from work on a regular, i.e., daily basis. David Morell; Michael L. Martin, GSBCA 13821-RELO, 97-2 ¶ 29,142; John K. Bowman, B-247125 (June 12, 1992). Claimant has not presented evidence that he regularly commuted

to work from Laurium, Michigan to Buffalo, New York during the course of his employment. Nor has the agency District Office demonstrated that the area of Buffalo, New York is a remote area with a lack of adequate family housing or that maintaining a residence in Laurium, Michigan would bear any reasonable relationship to claimant's permanent duty station of Buffalo, New York.

There are rare exceptions to the daily commuting rule. When an employee is away from his permanent duty station on a long term assignment with his family at the time of his transfer, the residence at his old duty station will be considered his residence for the purpose of PCS entitlements, so long as other conditions of eligibility are met. Richard S. Citron, GSBCA 15166-RELO, 00-1 BCA ¶ 30,788; John E. Wright, 64 Comp. Gen. 268 (1985). When an employee is constantly on travel status with no single official duty station except one maintained for administrative convenience, then sale of a permanent residence not within commuting distance of the official station will qualify. James W. Respass, GSBCA 15532-RELO (June 1, 2001); Rowan L. Peterson, B-260322 (Aug. 15, 1995). Claimant does not fall within these recognized exceptions. Laurium, Michigan was never claimant's permanent duty station from which he left for a long-term assignment. Neither the agency District Office nor claimant has demonstrated that when claimant was working on a tugboat or at the Black Rock Lock at Buffalo, New York as a temporary employee, he was on travel status and that Buffalo, New York was simply an official station designated for administrative convenience. We must conclude, therefore, that the agency's Finance Office correctly determined that the agency's District Office issued an invalid travel authorization.

We consider whether claimant is entitled to expenses as a new appointee as of April 25, 1999. We cannot find that when claimant was converted to career conditional employment, he was entitled to reimbursement of more limited expenses as a new appointee. Statute and regulation make no distinction between temporary and permanent positions for determining eligibility for relocation entitlements. Cf. Greg T. Montgomery, B-196292 (June 6, 1983); Administrator, Veterans Administration, 41 Comp. Gen. 434 (1962). A newly appointed temporary employee would be entitled to expense reimbursement allowed any new appointee, Mary M. Rydquist, B-171495 (Mar. 4, 1971), provided that the appointee could enter into a service agreement to remain in Government service for twelve months or more. 5 U.S.C. § 5723(a), (b). Here, the terms and conditions of claimant's temporary appointments prevented claimant's eligibility for new appointee benefits arising from his first temporary appointment in April 1997.² As of April 25, 1999, nevertheless, claimant had two years of continual service as a temporary employee. He was not a new appointee upon his conversion from temporary to career conditional employment in April 1999.

Finally, the agency District Office argues that the Government is estopped from denying claimant PCS benefits. The Government is not estopped when Federal officials have issued erroneous travel authorizations. The Government is not bound beyond the actual authority conferred on its agents by statute or regulation, even though the agents may have

² The agency may make temporary limited appointments not to exceed one year, extendable to a maximum of twenty-four months. 5 CFR 316.401(c). Claimant's temporary appointment was based on 5 CFR 316.402(b)(4).

been unaware of the limitations on their authority. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); Thomas W. Schmidt, GSBCA 14747-RELO, 00-1 BCA ¶ 30,757.

The agency District Office relies on Pratte v. National Labor Relations Board, 530 F. Supp. 461 (N. D. Ill. 1981), for the proposition that the Government is estopped from denying claimant relocation payments here. This decision is not good authority for two reasons. First, that lower court decision was reversed. Pratte v. National Labor Relations Board, 683 F.2d 1038 (7th Cir. 1982). Second, that case involved the Government's hiring practices in light of a budget freeze and whether the plaintiff had met the elements of estoppel, not whether the Government could be estopped at all. It is clear, however, that erroneous oral or written advice by Government officials concerning a Government monetary benefit does not give rise to estoppel against the Government and does not thereby entitle a claimant to a Government payment not otherwise authorized by law. Office of Personnel Management v. Richmond, 496 U.S. 417, 425-26, 434 (1990).

The Board denies the claim.

ANTHONY S. BORWICK
Board Judge